

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
WILMINGTON, DELAWARE 19801**

JOHN K. WELCH
JUDGE

January 22, 2018

Geoffrey S. Lockyer, Esquire
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Dover, Delaware 19901
Attorney for Plaintiff

Erica L. Rivera
2601 Kirkwood Highway
Wilmington, DE 19805
Pro se Litigant

**RE: *Progressive Direct Insurance Company v. Erica L. Rivera*
CPU4-17-001278**

Dear Mr. Lockyer & Ms. Rivera:

1) This case concerns a subrogation action stemming from a motor vehicle accident.¹

On June 17, 2016, Plaintiff Progressive Direct Insurance Company (“Progressive”) a/s/o Berenice Bernabe Deloya (“Ms. Deloya”) filed a Complaint against Defendant Erica L. Rivera (“Ms. Rivera”). Progressive alleges that on May 05, 2015, Ms. Rivera’s negligently driving caused her vehicle to rear-ended Ms. Deloya’s 2010 Nissan vehicle (“Nissan vehicle”), resulting in damage to the Nissan vehicle and bodily injury to Ms. Deloya. Progressive insured

¹ “Subrogation is ‘a substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, and its rights or remedies.’ ” *Progressive Nw. Ins. Co. v. Jones*, 1997 WL 1737123, at *1 (Del. Com. Pl. Oct. 13, 1997) (quoting *Sinex v. Wallis*, 565 A.2d 1384 (Del. Super. 1988)).

the Nissan vehicle. Progressive's Complaint seeks \$3,454.14 in damages, plus post-judgment interest and costs.²

2) On July 20, 2016, Defendant filed an Answer. She admitted that she "tapped" the bumper of the Nissan vehicle, but denied damaging the vehicle.³

3) On October 17, 2017, trial was rescheduled in lieu of settlement discussions. On December 18, 2017, trial was convened in this matter. Trial lasted approximately twenty (20) minutes. The Court heard testimony from Ms. Deloya and Ms. Rivera. Progressive submitted three exhibits into evidence without objection.⁴ Ms. Rivera submitted three exhibits into evidence without objection.⁵ The Court reserved its decision.

4) At trial, Ms. Deloya testified that on May 5, 2015 she was a passenger in her Nissan vehicle. The driver of the Nissan vehicle slowed for traffic ahead and became stationed behind a school bus at an intersection on Union Street in Wilmington, Delaware. While waiting behind the school bus, the Nissan vehicle was rear-ended by a vehicle driven by Ms. Rivera.⁶ The front bumper of Ms. Rivera's vehicle came in contact with the Nissan vehicle's rear bumper.

5) After the accident, the State of Delaware Police and an ambulance arrived at the scene. Ms. Deloya testified that because she was pregnant at this time, the collision produced contractions. She was therefore transported to St. Francis Hospital for treatment.⁷ Progressive

² Progressive does not parse this figure in its Complaint. However, as noted below, it appears to be calculated based on: \$583.60 in vehicle repair, \$78.40 in lost wages, and \$2,792.14 in medical costs.

³ Defendant's Answer at 2 ("I did not strike the 2010 Nissan, I tapped the bumper.").

⁴ Plaintiff's Exhibit 1 was Ms. Rivera's Answer to the Complaint. Progressive's other exhibits will be discussed below.

⁵ Ms. Rivera's exhibits will be discussed below.

⁶ Plaintiff's Exhibit 2 (State of Delaware Uniform Collision Report).

⁷ Ms. Deloya testified that her treatment included an ultrasound and "some tests."

appears to have been billed \$4,195.00 for this treatment, paying only \$2,792.14 as of June 27, 2015.⁸ Ms. Deloya testified that the Nissan vehicle required repairs to its rear bumper after the collision. Progressive appears to have paid \$583.60 in repair costs for the Nissan vehicle.⁹

6) At trial, Ms. Rivera agreed with Ms. Deloya's recitation of the vehicles' positions prior to the collision and that her vehicle rear-ended Ms. Deloya's Nissan vehicle. However, Ms. Rivera testified that the contact was only a mere "tap." Ms. Rivera submitted pictures that she took of the Nissan vehicle on the date of the collision into evidence.¹⁰ The pictures do not evidence rear-end damage to the Nissan vehicle.

7) In civil claims, the plaintiff bears the burden to prove each and every element of his or her claims by a preponderance of the evidence.¹¹ The side which establishes the greater weight of evidence in its favor has met the preponderance standard.¹²

8) As trier of fact, the Court is the sole judge of the credibility of each fact witness and any other information provided. If the Court finds the evidence presented at trial conflicts, it is the Court's duty to reconcile these conflicts—if reasonably possible—in order to find congruity. If the Court is unable to harmonize the conflicting testimony, then the Court must determine which portions of the testimony deserve more weight in its final judgment. The Court must disregard any portion of the testimony which the Court finds unsuitable for consideration. In ruling, the Court can consider the witnesses' demeanor, the fairness and

⁸ Plaintiff's Exhibit 3. The medical information in the exhibit is found in "Medical Payments/PIP – Print Preview." This "Preview" does not state what the payments concern. The list only contains the charges and dates. *See id.* This "Preview" also includes "Wage Loss Details," yet, Ms. Deloya did not testify to any lost wages. *See id.*

⁹ Plaintiff's Exhibit 3. Progressive requested only \$500 at trial. Granted, the exhibit is unclear as to what final amount Progressive paid. *See id.*

¹⁰ Progressive did not object to Ms. Rivera's pictures being admitted into evidence.

¹¹ *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

¹² *Id.*

descriptiveness of their testimony, their ability to personally witness or know the facts about which they testify, and any biases or interests they may have concerning the nature of the case.

9) “In order to prevail on a claim for negligence, a plaintiff must prove, by a preponderance of the evidence, that: (1) the defendant owed the plaintiff a duty of care; (2) the defendant breached that duty of care; (3) the defendant's breach proximately caused the plaintiff's harm, and; (4) the plaintiff suffered damages.”¹³ Notably, “the violation of a Delaware statute enacted for the safety of others is evidence of negligence per se[;] [h]owever, there must be a causal connection between such a statutory violation and the injury alleged.”¹⁴ Further, even if negligence per se is established, an action for damages requires proof that defendant's actions were a proximate cause.¹⁵ “In Delaware, proximate cause is one ‘which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.’ ”¹⁶

10) Progressive's requested damage award of \$3,454.14 appears to be calculated based on: \$583.60 in vehicle repair, \$78.40 in lost wages, and \$2,792.14 in medical costs.¹⁷ Based on the testimonial and documentary evidence, the Court finds that Progressive has established that Ms. Rivera breached her common law and statutory duty of care.¹⁸ Likewise, Progressive has proven that Ms. Rivera's vehicle's rear-end collision with the Nissan vehicle proximately

¹³ *Atlantic States Ins. Co. v. Charles C. Connell Co.*, 2015 WL 3540387, at *3 (Del. Com. Pl. June 4, 2015); *accord New Haverford P'Ship v. Stroot*, 772 A.2d 792, 798 (Del. 2001).

¹⁴ *See State Farm Mut. Auto. Ins. Co. v. Curtis*, 2000 WL 33653454, at *2 (Del. Com. Pl. June 7, 2000) (internal citations omitted).

¹⁵ *See id.*

¹⁶ *Gov't Employees Ins. Co. v. Murphy*, 2005 WL 3736039, at *2 (Del. Com. Pl. Dec. 6, 2005) (Welch, J.) (quoting *Duphill v. Delaware Electric Cooperative, Inc.*, 662 A.2d 821, 828 (Del. 1995)) (internal quotation marks omitted).

¹⁷ Plaintiff's Exhibit 3.

¹⁸ 21 Del. C. § 4176; *see also Curtis*, 2000 WL 33653454, at *2 (“The Court finds by a preponderance of the evidence that the defendant . . . breached her duty of care owed as a reasonable driver under the circumstances Aside from breaching her common law duty of care the Court also finds she also is negligent per se in violating 21 Del. C. § 4176(a) and (b) [Careless or inattentive driving].”).

caused Ms. Deloya to be transported to St. Francis Hospital. However, under a common law analysis, Progressive has failed to prove by a preponderance of the evidence that Ms. Rivera's actions were a proximate cause of harm to Ms. Deloya's vehicle, as property damage was not proven by a preponderance of evidence. Further, Progressive failed to prove the appropriate bodily injury and property damages by a preponderance of the evidence. Additionally, under a statutory analysis, Progressive has failed to prove by a preponderance of the evidence that there is a "causal connection" between the statutory violation and alleged injury, as damages were not proven.¹⁹

11) The Court has been presented with a very limited factual record. Progressive failed to call a Progressive representative to testify regarding the specific figures for the Nissan vehicle's repair.²⁰ Progressive also failed to call a representative from St. Francis Hospital to testify as to what medical services were performed on May 5, 2015. Ms. Deloya testified that she had an "ultrasound" and "some tests" performed, but did not elaborate. Also, the documentary evidence does not support her assertions.

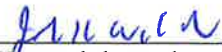
12) Further, the Court finds Ms. Rivera's testimony and exhibits credible. The pictures were taken on the date in question and fail to evidence rear-end damage to Ms. Deloya's Nissan vehicle. Progressive's assertion in closing arguments that it does not pay unnecessarily on claims is unhelpful. Therefore, the Court finds that Progressive has failed to meet its burden.

¹⁹ See *Curtis*, 2000 WL 33653454, at *2.

²⁰ See, e.g., *State Farm Mut. Auto. Ins. Co. v. Polk*, 2001 WL 34077742, at *1 (Del. Com. Pl. Oct. 16, 2001); *State Farm Mut. Auto. Ins. Co. v. Pollard*, 2000 WL 33653422, at *1 (Del. Com. Pl. Nov. 14, 2000) (Welch, J.).

WHEREAS, for the foregoing reasons, the Court hereby finds in Defendant Erica L. Rivera's favor. Plaintiff Progressive Direct Insurance Company has failed to satisfy its burden of proof by a preponderance of the evidence.

IT IS SO ORDERED this 22nd day of January, 2018.



John K. Welch, Judge

cc: Ms. Tamu White, Chief Civil Clerk